

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

JAMES McDOWELL,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	2:16cv003-MHT
)	(WO)
MASSEY AUTOMOTIVE, INC.,)	
)	
Defendant.)	

ORDER

It is ORDERED that plaintiff's motion for new trial (doc. no. 92) is denied.

The Age Discrimination in Employment Act provides, in relevant part, that, "It shall be unlawful for an employer ... to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1) (emphasis added). Similarly in Gross v. FBL Financial Services, Inc., 557 U.S. 167, 176 (2009), the Supreme

Court held that the standard was "because of," that is, "but for." This court, therefore, properly gave the Eleventh Circuit Pattern Jury Instruction which tracks the language of the statute exactly and uses the "because of" standard. Nothing more was needed.

DONE, this the 25th day of September, 2017.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE